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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/977,067	10/12/2001	David Capano	0830.06IA	1830
7590	10/19/2004		EXAMINER [REDACTED]	POPE, DARYL C
David A. Pascarella, Esq. Heslin Rothenberg Farley & Mesiti P.C. 5 Columbia Circle Albany, NY 12203			ART UNIT [REDACTED]	PAPER NUMBER 2632

DATE MAILED: 10/19/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/977,067	CAPANO ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	DARYL C POPE	2632	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 30 June 2004.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-25 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
  - 1) Certified copies of the priority documents have been received.
  - 2) Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - 3) Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date: _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date: _____  | 6) <input type="checkbox"/> Other: _____                                    |

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### **DETAILED ACTION**

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

#### **ART REJECTION:**

##### ***Claim Rejections - 35 USC § 103***

2. Claims 1-13,18-22, and 23-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fewel in view of Cornick for the reasons of record as discussed in the previous office action.

– Claims 23-25 recite subject matter that has been met as discussed with reference to the discussion of claims 1,7, and 10 in the previous office action.

3. Claims 14-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cornick for the reasons of record as discussed in the previous office action.

#### **REMARKS:**

##### ***Response to Arguments***

4. Applicant's arguments filed 6/30/04 have been fully considered but they are not persuasive.

The applicant is contending for various reasons that the references to Fewel and Cornick do not meet the claimed subject matter. In the previous art rejection, the examiner provided an art rejection including detailing specific sections in combination with various arguments as to why the claimed subject matter is met by the above stated references. In reading the applicant's arguments filed 6/30/04, applicant attacks

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examiner's reasoning, in particular with respect to the inability to equate the system of Fewel to a grinder pump station.

The examiner provided reasoning as to the combination of the two references concerning this limitation in the previous Office action. Neither the applicants arguments nor the amendments to the claims have persuaded the examiner to change the positions as stated in the prior art rejection, and therefore, the applicant's arguments are not deemed persuasive.

### ***Conclusion***

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to DARYL C POPE whose telephone number is (571) 272-2959. The examiner can normally be reached on M-TH 8:00-6:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, DANIEL WU can be reached on (571) 272-2964. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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Daryl C. Pope

Oct. 13, 2004

DARYL C POPE  
Primary Examiner  
Art Unit 2632

